

Exhibit 337

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

CAUSE NO. GV002327

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THE STATE OF TEXAS) IN THE DISTRICT COURT
 ex rel.)
 VEN-A-CARE OF THE)
 FLORIDA KEYS, INC.)
)
 Plaintiffs,)
)
 VS.) TRAVIS COUNTY, TEXAS
)
 DEY, INC.; ROXANE)
 LABORATORIES, INC. and)
 WARRICK PHARMACEUTICALS)
 CORPORATION,)
)
 Defendants.) 53rd JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF
 ROBERT FRANCIS MOZAK
 November 1, 2001

ORAL DEPOSITION OF ROBERT FRANCIS MOZAK,

produced as a witness at the instance of the Plaintiffs
 and duly sworn, was taken in the above-styled and
 numbered cause on the 1st day of November 2001, from
 9:12 a.m. to 4:57 p.m., before Randall N. Finch, CSR in
 and for the State of Texas, reported by machine
 shorthand, at the offices of Coudert Brothers, 600
 Beach Street, Third Floor, San Francisco, California
 94109, pursuant to Notice, the Texas Rules of Civil
 Procedure and the provisions as previously set forth.

A P P E A R A N C E S

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1 **form, but using McKesson headings. Correct?**
 2 A. Mm-hmm.
 3 **Q. Which part of the company would prepare --**
 4 **could have prepared some -- had the capacity to prepare**
 5 **something like that in October of 1996?**
 6 MR. HUDSPETH: Objection; form.
 7 THE WITNESS: It could have been done by
 8 an individual salesman in the field with his own
 9 personal computer, and perhaps somebody who had a
 10 computer internally.
 11 **Q. (By Mr. Breen) Could it have been done by the**
 12 **accounting department?**
 13 A. Could have been.
 14 **Q. Did they have computers?**
 15 A. Yes.
 16 **Q. At that time?**
 17 A. Yeah, they would have had computers.
 18 **Q. Okay.**
 19 (Exhibit 90 marked)
 20 MR. WINTER: Next exhibit is Exhibit 90,
 21 it's 0009401.
 22 **Q. (By Mr. Breen) Have you ever seen this**
 23 **before, sir?**
 24 A. No.
 25 **Q. Again, does this appear to be a Dey**

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1 **Laboratories prepared document?**
 2 A. It has Dey Laboratories' name on it, so it may
 3 have been -- it -- it's possible it was reported --
 4 done inside.
 5 **Q. Do you know what Bindley Western is?**
 6 A. Yes.
 7 **Q. And have you ever heard of the Bindley Western**
 8 **source program proposal?**
 9 A. Bindley Western has a source program for
 10 select pharmacies within its group similar to the
 11 Bergen and McKesson.
 12 **Q. Bindley is another big wholesaler, right?**
 13 A. Yes. It was.
 14 **Q. Was it acquired?**
 15 A. Yes, it was acquired.
 16 **Q. By who?**
 17 A. Cardinal.
 18 **Q. Cardinal. Does Cardinal have its own group**
 19 **purchasing program?**
 20 A. Yes, it does.
 21 **Q. For its pharmacies?**
 22 A. Yes, it does.
 23 **Q. And that's one of the other largest**
 24 **wholesalers in the country?**
 25 A. Yes, it is.

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1 **Q. Okay. Now, let's go back to this Bindley**
 2 **Western document, which purports to be dated 1/12/96.**
 3 **And again, I see in the third column from the right the**
 4 **word "Source" which appears to be the name of Bindley**
 5 **Western's group purchasing arrangement or program, and**
 6 **then the word "Net Price" under it again. Do you see**
 7 **that?**
 8 A. Yes, I see that.
 9 **Q. Just like on the McKesson form, I saw the word**
 10 **"Select" which was McKesson's select program and then**
 11 **the word "Net Price" under that.**
 12 A. Yes.
 13 **Q. Now, was Bindley Western related to McKesson?**
 14 A. Not that I'm aware of.
 15 **Q. In any way in 1996?**
 16 A. Not that I'm aware of.
 17 **Q. So I'll ask you again with respect to the**
 18 **Bindley Western Exhibit 90, what -- whose term is the**
 19 **net -- is the term "Net Price"?**
 20 A. Refers to the contract price.
 21 **Q. Okay, I understand that when you see net price**
 22 **you think contract price.**
 23 A. Right.
 24 **Q. We know that. But I'm trying to figure out if**
 25 **this term net price, which I now see on two separate**

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1 **and divergent spreadsheets prepared purportedly by Dey**
 2 **Laboratories, is a term used by Dey Laboratories in its**
 3 **own communication systems.**
 4 A. It is -- it is not normally used.
 5 **Q. It's -- okay, not normally used. And in order**
 6 **to find out why the word "Net Price" keeps popping up**
 7 **on these types of spreadsheets as we have in front of**
 8 **us now, who at Dey should I go talk to?**
 9 A. Finance department or the contract department,
 10 either one.
 11 **Q. And would your answer be the same for the**
 12 **suggested sales price or the suggested sale price?**
 13 A. Yes.
 14 **Q. Go talk to finance or accounting. Who there?**
 15 A. Pam Marrs.
 16 **Q. Pam Marrs. Okay. And how about in contracts?**
 17 A. Russell Johnston.
 18 **Q. Russell Johnston. Okay.**
 19 **Now, let me show you what was marked as**
 20 **Exhibit 72 yesterday during Mr. Rice's deposition.**
 21 **I'll ask, have you ever seen that document before?**
 22 A. I saw it about two years ago for the first
 23 time during when we were collecting documents.
 24 **Q. You were surprised when you saw that document**
 25 **for the first time two years ago?**

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1 A. Yes, I was.

2 **Q. Why?**

3 A. Well, first of all, it's incorrect. It should

4 have never gone out.

5 **Q. Incorrect in what context?**

6 A. In -- in several contexts. It didn't -- it

7 didn't mention all the WAC states. It's also incorrect

8 as it -- as it relates to the first sentence in the

9 second paragraph, where it says WAC is not

10 representative of the published wholesale prices.

11 **Q. Well, what WAC states did it miss, to your**

12 **knowledge?**

13 A. Probably missed Texas, I -- and I'm not sure

14 I -- others.

15 **Q. Okay. But Texas is conspicuously absent?**

16 A. Yes, it was.

17 **Q. Okay. It also talks about increasing the WAC**

18 **prices as a competitive response to Warrick. Correct?**

19 A. Doesn't quite say that in those terms, no.

20 **Q. Well, why don't you read it? I hate to have**

21 **you do this, but just read the language that we're**

22 **talking about right now so we can discuss it and make**

23 **sure that the questions are clear.**

24 A. The whole -- with the whole letter or just the

25 last sentence?

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1 **Q. The last sentence about adjusting WAC prices.**

2 A. "Our updated WAC values are in line with the

3 Warrick WAC value -- Warrick WAC values provided by

4 First Data Bank and should level the playing field for

5 Medicaid reimbursements."

6 **Q. Did Mrs. -- was Mrs. Burnham involved in**

7 **increasing WAC prices at Dey Laboratories at or about**

8 **the time of that memo?**

9 A. Yes, she did.

10 **Q. Was she authorized to do that?**

11 A. No, she was not.

12 **Q. Was she disciplined for it.**

13 A. She left the company approximately three

14 months after it happened, so she was not disciplined.

15 **Q. And when it happened -- I realize you first**

16 **saw the memo about two years ago, but that memo goes**

17 **back to what, '95?**

18 A. Yes. Correct.

19 **Q. Were you aware that Ms. Burnham had increased**

20 **WAC prices at or about the time that she did it?**

21 A. I was not aware that she had done that.

22 **Q. When did you first become aware that she had**

23 **done that?**

24 A. I became aware of it about six months later

25 when through normal routine checks one of the other

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1 individuals in the marketing department was doing some

2 routine checks with the databases and came to me and

3 mentioned to me that the WAC price in the First Data

4 Bank was incorrect, that it -- that it was correct in

5 the two other databases --

6 **Q. Okay.**

7 A. -- Red Book and Medi-Span, but it was

8 incorrect in First Data Bank.

9 **Q. Well, First Data Bank is the one that the**

10 **Medicaid programs rely on. Right?**

11 MR. HUDSPETH: Objection; form.

12 THE WITNESS: Well, I'm not sure which

13 one they -- they -- whether it's that one or all of

14 them, but I instructed her to immediately change it at

15 that point in time.

16 **Q. (By Mr. Breen) And was it changed?**

17 A. We informed the First Data Bank that they

18 needed to change it. I'm not sure if they actually did

19 change it at that point in time, but we definitely did

20 inform them.

21 **Q. What did Dey do, if anything, to compensate**

22 **the state Medicaid programs for any increased**

23 **reimbursement they may have made due to that**

24 **unauthorized increase in the reported WAC?**

25 MR. MOORE: Objection; form.

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1 MR. HUDSPETH: We would join in that

2 objection, obviously.

3 THE WITNESS: I am unaware of that.

4 MR. BREEN: Okay. Well, let me ask the

5 question betterer.

6 MR. MOORE: Betterer.

7 MR. HUDSPETH: By the way, I'm assuming

8 we are continuing to operate under the rules if one

9 person objects it applies for everybody on the defense

10 side. Right?

11 MR. MOORE: That's been our agreement in

12 all the depositions.

13 MR. HUDSPETH: Anybody have a problem

14 with that?

15 MR. ANDERSON: For the defense and the

16 plaintiff.

17 MR. HUDSPETH: Yeah, that's what I

18 thought.

19 MR. BREEN: I always assumed that if one

20 of you finds my question objectionable -- objectionable,

21 everybody is going to agree with them.

22 **Q. (By Mr. Breen) Okay. Let's go back to '95.**

23 **About six months after Ms. Burnham increased WAC**

24 **prices, you find out about it. Correct?**

25 A. Yeah. It was actually December of that same